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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/767,431	01/22/2001	Charles L. Jones	US20000181	9566

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EXAMINER

VIG, NARESH

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/767,431

Applicant(s)

JONES, CHARLES L.

Examiner

Naresh Vig

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1 – 22 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, claims 1 - 22 only recites an abstract idea. The recited steps of merely establishing a product personality for a product, correlating the product personality with a visual characteristic, designing the product based on the correlation.

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does not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper. These steps only constitute an idea of how to design a product for manufacture.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, the claimed invention produces requirements branded products (i.e., repeatable) used in designing the product for manufacture (i.e., useful and tangible).

Although the recited process produces a useful, concrete, and tangible result, since the claimed invention, as a whole, is not within the technological arts as explained above, claim 1 is deemed to be directed to non-statutory subject matter.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Information on Diamler-Chrysler hereinafter known as Chrysler in view of an article “192-195 Chrysler Mini-Vans” hereinafter known as VMR.

Regarding claim 1, Chrysler teaches making products (automobiles) having visual characteristics and personalities [page 3].

Chrysler does not teach establishing a product personality for a product. However, VMR teaches making products by establishing product personality (a box on wheels that maximized usable space and felt and drove like a car. That left Chrysler to introduce the now ubiquitous minivan) [page 1];

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Chrysler as taught by VMR and establish product personality for a product to make the product which a consumer will purchase.

Chrysler in view of VMR teaches:

correlating the product personality with a visual characteristic (e.g. minivan) [page 5 – 19]; and

designing the product based on the correlation (e.g. Plymouth Voyager) [5 – 19].

Regarding claim 2, Chrysler teaches establishing at least one personality characteristic of the product (e.g. Plymouth voyager, Dodge Caravan, Chrysler Town and Country) [page 8 – 19].

Regarding claim 3, Chrysler teaches establishing at least one personality characteristic further includes the step of assigning at least one adjective to the

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personality characteristic (e.g. Plymouth voyager, Dodge Caravan, Chrysler Town and Country) [page 8 – 19].

Regarding claim 4, Chrysler teaches establishing the product personality further includes the step of creating a perceptual map (e.g. Plymouth voyager, Dodge Caravan, Chrysler Town and Country, PT Cruiser, Sebring) [page 8 – 31].

Regarding claim 5, Chrysler teaches establishing the product personality further includes the step of creating a perceptual map (e.g. Plymouth voyager, Dodge Caravan, Chrysler Town and Country, PT Cruiser, Sebring) [page 8 – 31].

Regarding claim 6, Chrysler teaches creating a perceptual map further includes the step of creating a map with a plurality of axes that are exclusive and differentiated (e.g. Plymouth voyager, Dodge Caravan, Chrysler Town and Country, PT Cruiser, Sebring) [page 8 – 31].

Regarding claim 7, Chrysler teaches correlating the product personality with a visual characteristic further includes the step of selecting a configuration for at least a

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component of the product (e.g. Plymouth voyager, Dodge Caravan, Chrysler Town and Country, PT Cruiser, Sebring) [page 8 – 31].

Regarding claim 8, Chrysler teaches selecting a product configuration further includes the step of selecting a texture of at least a component of the product (e.g. Plymouth voyager, Dodge Caravan, Chrysler Town and Country, PT Cruiser, Sebring) [page 8 – 31].

Regarding claim 9, Chrysler teaches selecting a product configuration further includes the step of selecting an architecture of at least a component of the product (e.g. Plymouth voyager, Dodge Caravan, Chrysler Town and Country, PT Cruiser, Sebring) [page 8 – 31].

Regarding claim 10, Chrysler teaches selecting a product configuration further includes the step of selecting a brand identifier of the product [page 15].

Regarding claim 11, Chrysler teaches brand identifier comprises a logo [page 15].

Regarding claim 12, Chrysler teaches selecting a brand identifier further comprises the step of establishing at least one personality characteristic of the product (e.g. Plymouth voyager, Dodge Caravan, Chrysler Town and Country, PT Cruiser, Sebring) [page 8 – 31].

Regarding claim 13, Chrysler teaches establishing at least one personality characteristic further includes the step of assigning at least one adjective to the personal characteristic (e.g. Plymouth voyager, Dodge Caravan, Chrysler Town and Country, PT Cruiser, Sebring) [page 8 – 31].

Regarding claim 14, Chrysler teaches correlating the product personality with the visual characteristic further includes the step of correlating the product personality with a perceptual map (e.g. Plymouth voyager, Dodge Caravan, Chrysler Town and Country, PT Cruiser, Sebring) [page 8 – 31].

Regarding claim 15, Chrysler teaches designing a product based on the correlation further comprises the step of selecting a brand to create a brand identifier



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(e.g. Plymouth voyager, Dodge Caravan, Chrysler Town and Country, PT Cruiser, Sebring) [page 8 – 31].

Regarding claim 16, Chrysler teaches selecting a brand to create a brand identifier further includes the step of correlating the brand identifier with a predetermined appearance of at least a component of the product [page 3].

Regarding claim 17, Chrysler teaches making aesthetically pleasing product (automobiles) having visual characteristics and personalities [page 3].

Chrysler does not teach establishing desired brand personalities for a product line. However, VMR teaches making products by establishing desired brand personalities for a product line (a box on wheels that maximized usable space and felt and drove like a car. That left Chrysler to introduce the now ubiquitous minivan) [page 1];

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Chrysler as taught by VMR and establish product personality for a product to make the product which a consumer will purchase.

Chrysler in view of VMR teaches [VMR page 1 – 5, Chrysler page 3 – 19]:

mapping customer perceptions of the brand personalities (Chrysler, Plymouth, Dodge brands);

correlating visual characteristics of the brand personalities to a desired brand (Chrysler, Plymouth, Dodge minivans);

determining visual characteristics of the desired brand; and

designing a product appearance in response to the visual characteristics of the desired brand (e.g. Plymouth Voyager) [page 3 – 19].

correlating the product personality with a visual characteristic (e.g. minivan) [page 5 – 19]; and

designing the product based on the correlation (e.g. Plymouth Voyager).

Regarding claim 18, Regarding claim 17, Chrysler teaches creating brand equity in a product line (automobiles) having visual characteristics and personalities [page 3].

(a) assigning desired personality adjectives to a current brand;

Chrysler does not teach assigning desired personality adjectives to a current brand. However, VMR teaches making products by establishing desired brand personalities for a product line (a box on wheels that maximized usable space and felt and drove like a car. That left Chrysler to introduce the now ubiquitous minivan) [page 1];

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Chrysler as taught by VMR and establish product personality for a product to make the product which a consumer will purchase.

Chrysler in view of VMR teaches:

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associating a plurality of images and a plurality of dominant personality traits to generate an association between the plurality of images with the plurality dominant personality traits (Chrysler, Plymouth, Dodge minivans);

correlating the association of the images and traits with the adjectives to generate an image adjective profile (Chrysler, Plymouth, Dodge minivans);

creating a brand visual characteristic by plotting the association on a perceptual map (Chrysler, Plymouth, Dodge minivans); and

abstracting a design from the plot and the image adjective profile to create a brand visual identifier (Chrysler, Plymouth, Dodge minivans).

Regarding claim 19, Chrysler teaches series of appliances (automobiles)

Chrysler does not teach product personality for a product. However, VMR teaches making products by establishing product personality (a box on wheels that maximized usable space and felt and drove like a car. That left Chrysler to introduce the now ubiquitous minivan) [page 1];

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Chrysler as taught by VMR and establish product personality for a product to make the product which a consumer will purchase.

Chrysler in view of VMR teaches:

a first appliance having an appearance with a visual characteristic correlated to a predetermined product personality; and a

second, different appliance having an appearance with a similar visual characteristic correlated to the product personality.

With respect to the claims 20 – 22, defining what the product line and the features of the products, this is considered to be non-functional descriptive material that does not distinguish (define) over the applied prior art. Since the instant claims are method claims to create a branded product with characteristics, product line and features of the products is considered to be non-functional descriptive material, the applied prior art satisfies the claim. The prior art creates the products (automobile) with features for the products (different models have different features), this is the extend to which weight will be given to the claimed data. When descriptive material is not functionally related to the article, the descriptive material will not distinguish the invention from the prior art in terms of patentability, *In re Gulack*, 217 USPQ 401 (CAFC 1983).

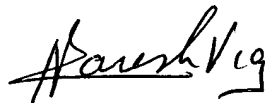
***Conclusion***

Applicant is required under 37 CFR '1.111 (c) to consider the references fully when responding to this office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naresh Vig whose telephone number is 703.305.3372. The examiner can normally be reached on M-F 7:30 - 5:00 (Alt Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 703.308.2702. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Naresh Vig  
Patent Examiner  
September 16, 2004